

No. 9(1)82-6I ab./7944.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Khadi Ashram, G.T. Road, Panipat.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 327 of 1978

between

SHRI RAM DIYA SINGH, WORKMAN AND THE MANAGEMENT OF M/S KHADI ASHRAM, G. T.,
ROAD, PANIPAT

Present.— Shri Raghbir Singh, for the workman.

Shri Surinder Kaushal, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor, - *vide* his order No. ID/KNL/564-77/54043, dated 29th November, 1978 under section 10(i)(c) of the I.D. Act for adjudication of the dispute existing between Shri Ram Diya Singh, workman and the management of M/s Khadi Ashram, Panipat. The term of the reference was :—

Whether the termination of services of Shri Ram Diya Singh was justified and in order ? If not, to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance and the workman filed his statement of claim. The management filed their written statement on 21st May, 1979 where in the management offered to reconsider the case of the workman for re-employment if he produces the medical fitness certificate from the Chief Medical Officer. The workman was directed to produce the fitness certificate and approached the management for assigning duty to him on 25th June, 1979. On 23rd July, 1979 also the workman was directed to contact the Senior Medical Officer, Panipat and to get himself examined and submit his medical fitness certificate to the management and the case was fixed for 4th September, 1979 for proceeding further if the workman failed to submit his medical fitness certificate. On 4th September, 1979 no one appeared on behalf of the applicant and there is no mention in the proceedings about the medical certificate required to be furnished by the workman. The following issues were framed on the basis of the pleas of the parties :—

- (1) Whether the enquiry before the termination of service was held ? If not, held what its effect ?
- (2) Whether the termination of services of Shri Ram Daya Singh was justified and in order ?

The management examined Shri Hari Singh, Office Incharge of the respondent concern as their only witness and closed their case. The workman examined Shri Phool Singh, Record Keeper, respondent and himself as his witnesses and closed his case. I heard the learned representatives of the parties and decide the issues as under.

Issue No. 1 and 2 :—The management has placed on file the whole of the correspondence which has taken place between the workman and the management from the date of his transfer from Panipat to Chandigarh which is 17th August, 1976 onwards up to 18th July, 1977 along with the copy of comment filed by them before the Labour-cum-Conciliation Officer, Panipat. The workman has admitted most of the documents and denied some of the letters sent to him by the management regarding his transfer to Chandigarh and to join his duties at Chandigarh as no further leave was to be granted to him. The documents filed are 32 in number which have been exhibited as M-1 to M-32. The workman has deposed in his cross-examination that he did not know as to from which day he was on leave during August, 1976. He was continuing on leave. He came to know of his transfer to Chandigarh through the Manager, Khadi Ashram, Panipat. He came to know his transfer in the month of September, 1976. He admitted as correct that the letter Ex. M-3 was sent by him just after his transfer. The letter Ex. M-3 is dated 24th August, 1976 and the transfer order is dated 17th August, 1976. The workman has denied his signatures on A.D. receipt Ex. M-A. He admitted as correct that his address was ward No 2, Kishan Pura Panipat. He has also admitted as correct that he has shown his inability to join at Chandigarh but it was wrong to suggest that he continued applying for leave as he did not like to go

to Chandigarh. He admitted as correct that he had given assurance that he would join at Chandigarh when he became fit. He admitted as correct that he did not attend his duties from August, 1976 onwards. He was not aware whether he remained on leave without pay for 235 days and on leave with pay for 15 days during the year 1976-77 and during the year 1975-76 he remained on without pay leave for 89 days and with pay leave for 52 days and during the year 1974-75 he remained on without pay leave for 84 days and on with pay leave for 6 days. He further stated that he did not maintain any duplicate copy of the application for leave from 1st July, 1977 to 31st July, 1977 nor there was any receipt of the same with him. He has further stated that he had not remained ill continuously during the period from August, 1976 to July, 1977 and he happened to be without any illness at intervals. He could not recollect as to for how long he remained free from illness but it was correct that he did not write to the management that he was fit and he may be allowed to join his duties. The workman further admitted that he received the letter Ex.M-29.

From the statement of the workman it can well be believed that the workman was duly informed of his transfer from Panipat to Chandigarh and he sent Ex. M-3 after he came to know of his transfer requesting that his transfer order be cancelled. After this the workman sent letter after letter requesting for leave on the ground of his own illness and on the ground of the illness of his wife. He has also requested to transfer him to Jajjar or back to Panipat which conclusively proves that the workman did not want to join at Chandigarh. The workman has relied on Ex. W-2/1 which is a letter from the management dated 26th October, 1976. By this letter it cannot be presumed that the workman was entitled to leave for an indefinite period, it can only mean that the applicant will be granted leave for a reasonable time and the applicant was sanctioned leave up to 30th June, 1977 for about 8 months after the issuance of the letter Ex. W-2/1. This showed that the workman wanted to take undue advantage of letter Ex. W-2/1 further establishes that the workman had no intention to join at Chandigarh and to avoid this he went on applying for leave and I am certainly of the view that this process would have continued till he was not posted at the place of his choice. The long correspondence between the workman and the management conclusively proves that the workman did not join his duty at Chandigarh wilfully even at times when he was not sick and under these circumstances there was no need to hold any enquiry as on the very first instance the workman had requested for cancellation of his transfer orders. —vide his letter Ex. M-3. The leave applications on account of the illness seem to be mere excuses for not joining at Chandigarh. I therefore, hold that though no formal enquiry was held by the management but the same was not called for as per the lengthy correspondence which has taken place between the parties and is sufficient in providing reasonable opportunity to the workman and the termination on the basis of this correspondence is not in any way illegal or improper. The workman has placed a letter Mark A on the file while have been put to the management witness in his cross-examination who denied the knowledge of the same. The workman has not mentioned this letter in his statement when he appeared as his own witness. Mark-A is with regard to the direction of my learned predecessor for obtaining a medical certificate from the Senior Medical Officer, Panipat and to submit the same to the management for resumption of his duties with the management. The workman has also not brought the fact of the letter Mark M to the notice of my learned predecessor nor to him which cannot be placed any reliance as per the conduct of the workman. The management has proved from the previous record relating to the years 1974-75, 1975-76 and 1976-77 that the workman has remained on leave for quite a considerable large part of the year whether it was without pay leave or with pay leave. I am, therefore, on the basis of evidence discussed above, constrained to hold that the workman remained on leave on the pretext of sickness for about a year and the management was justified in terminating his services as it was not possible to grant any further leave as also the workman was not prepared to join at Chandigarh and if it is taken as correct that the workman has remained sick for this period even then the management was justified in terminating his services on the ground of protected illness in accordance with the rules applicable to the management. The workman is not entitled to any relief. The reference is answered and returned accordingly.

Dated, the 26th July, 1982.

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.

Endorsement No. 1808, dated 30th July, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.